

Best Practice Guidelines and Standards

Guidelines for Electronic Evidence

This policy is intended to assist parties, counsel, and the courts in working with electronic evidence and is not mandatory. For purposes of this policy, "electronic evidence" is evidence created, transmitted, or stored in digital form.

I. Electronic Evidence Submitted to Courts

1. When electronic evidence is used during trial, the submitting party/counsel should provide the court with

(a) the original evidence, as amended through trial, on its submitted storage device with data preserved in its native format; and

(b) a duplicate copy of the evidence, that shall be

(i) formatted as an Adobe Acrobat PDF file (in read only format), a comma delimited data file, an XML file, a JPEG, an MPEG, or an MP3 audio file;

(ii) provided on a secure and protected media storage device; and

(iii) identified with an adhesive label that shall be affixed to each storage device legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), and the format(s) used.

2. Such storage devices shall be for the exclusive use of the courts and authorized court personnel, unless otherwise ordered.

II. Electronic Evidence on Appeal

1. The Clerk of the Court shall preserve electronic evidence in the following manners:

(a) the native form of the evidence shall be preserved as submitted with the bill of exceptions, pursuant to the existing rules of evidence;

(b) the duplicate media storage device shall be preserved as submitted with the original form of the evidence with the bill of exceptions; and

(c) the data stored on the accompanying storage device shall be transferred to the court's

server and stored with any electronic oral evidence. The server shall

(i) possess an architecture structure to provide easy access to files and allow for easy determination of files eligible for purging;

(ii) have adequate backup and disaster recovery procedures in place to protect the data; and

(iii) convert documents on file as necessary to current forms of software so that any future data extracted from the server shall not be provided in an antiquated format.

2. Upon request of a party or counsel, the court may provide, at such party's or counsel's expense, a copy of any electronic evidence, as well as any electronic oral evidence. Such evidence shall be provided in the format as preserved or on a storage device that is not antiquated by current technology standards.

III. Periodic Review

The Guidelines for Electronic Evidence shall be reviewed on a biannual basis by the Administrative Office of the Courts, which shall recommend any necessary updates to the formats, storage devices, and processes in the guidelines. The Administrative Office of the Courts shall also recommend any necessary file conversion of existing files to avoid obsolescence.

Guidelines for Monitoring Court-Appointed Attorney Fees

Nebraska county governments are responsible for the costs of court-appointed counsel for indigents in certain criminal and civil judicial proceedings. Indigent defendants charged with an offense which may result in imprisonment are entitled to court-appointed counsel. Even absent statutory authority, the courts have the inherent authority to make such appointments. *Kovarik v. County of Banner*, 192 Neb. 816, 224 N.W.2d 761 (1975). Court-appointed counsel is entitled to be paid *reasonable* attorney fees and expenses. See Neb. Rev. Stat. § 29-3905. Additionally, in some civil proceedings, such as actions under the Nebraska Juvenile Code, see, e.g., Neb. Rev. Stat. § 43-272, a juvenile has the right to counsel at county expense if the child or the parents are indigent.

The Nebraska Supreme Court is vested with the inherent authority to do all things necessary for the proper administration of justice and equity and the constitutional power to promulgate uniform rules for the effectual administration of justice. These powers include the authority to establish a statewide uniform compensation scheme for court-appointed attorneys. Such a mandatory system could become necessary where inadequate compensation of court-appointed counsel by county governments begins to impair the right to effective assistance of competent counsel. At present, the Court concludes that such a system may be premature. In the alternative, however, in order for this Court to fulfill its duty

to ensure that indigent persons are provided with competent, effective counsel, the Court hereby adopts the following guideline for statewide monitoring of court-appointed attorney fees and expenses paid by the counties:

Judges of the Nebraska judicial system may, in writing, request an inquiry by the Nebraska Supreme Court into inadequate compensation of court-appointed attorneys by counties within their judicial district. Written requests for an inquiry shall be presented to the Chief Justice and shall include sufficiently specific information to allow an initial assessment as to the adequacy of compensation practices of the county or counties at issue. Upon a showing of good cause, the Chief Justice shall appoint a representative of the Court who shall contact the appropriate county officials regarding the county's alleged failure to meet its financial obligations to indigent persons in judicial proceedings. In the absence of satisfactory explanation by the county of its practices, the Court may take whatever action it deems appropriate in order to compel compliance with the law.

Adopted January 24, 2008; amended March 12, 2008.
